

CHAPTER I

INTRODUCTIONA. PURPOSE

1. This Manual sets forth the personnel policies of the Department of Defense with respect to Nonappropriated Fund Instrumentality (NAFI) civilian employment consistent and in conformance with the principles and authorities contained in DoD Directives 1400.5, 1400.6, and 5120.42.

2. The purposes to be served by these policies are

a. Ensure that employees of the **NAFIs** are treated equitably and fairly in accordance with applicable laws, executive orders, and other pertinent regulations.

b. Provide the basis for achieving a desired degree of uniformity among **NAFIs** in the management of their personnel.

c. Recognize and provide a basis for dealing with labor organizations.

d. Promote those practices and processes that will facilitate obtaining, developing, and retaining a NAFI work-force of well qualified individuals.

e. Achieve optimum utilization of available manpower resources.

f. Recognize fully the contributions of the **NAFIs** to the overall morale, welfare, and recreation programs for military personnel, their dependents, and civilian employees of the Department of Defense by seeking to develop and maintain personnel programs that serve to preserve NAFI operational and financial integrity.

B. RESPONSIBILITIES

1. The Assistant Secretary of Defense (Force Management and Personnel) (**ASD(FM&P)**) is responsible for all personnel **policy** matters **related** to nonappropriated fund employees of the Department of Defense. Pursuant to DoD Directive 5120.42, the **ASD (FM&P)** shall establish the necessary formal and/or informal committees to develop, formulate and implement personnel policies for nonappropriated fund employees. Coordination within DoD, i.e., the Office of the Secretary of Defense, the Military Departments, and the Defense Agencies (hereafter referred to collectively as "DoD Components"), are handled through normal staff channels.

2. The **ASD (FM&P)** has designated the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) (**DASD(CPP)**) the administrator for this **Manual**. In this capacity the **DASD (CPP)** shall:

a. Maintain the Manual in coordination with appropriate authorities and publish necessary revisions and changes in accordance with DoD Directives System Procedures.

b. Maintain surveillance over the policies and programs set forth in the Manual, ensuring consistent implementation and continuous application throughout the Department of Defense.

3. The authority and responsibility for the development and execution of **NAFI** personnel management programs are delegated to the Heads of DoD Components as outlined in this Manual.

C. DEFINITIONS

The following definitions apply except where they may conflict with public law:

1. Appropriated Fund Employee. A person paid from funds appropriated by the Congress of the United States.

2. Nonappropriated Fund Instrumentality (NAFI) Employee. A person employed by a Nonappropriated Fund Instrumentality and compensated from **nonappropriated** funds.

3. Concessionaire. An entrepreneur placed under contract to an authorized Nonappropriated Fund Instrumentality for the purpose of providing goods and/or services.

4. Private Organization. A generally self-sustaining, non-Federal instrumentality, incorporated or not, and constituted or established and operated on a DoD installation with the written consent of the installation commander or higher authority, by individuals acting exclusively outside the scope of any official capacity as officers, employees, or agents of the Government.

5* DoD Components. The Office of the Secretary of Defense, the Military Departments, the Defense Agencies, and the Army and Air Force Exchange Service. (See DoD Instruction 1401.1 for special interpretation of DoD Components as it applies to this Manual.)

6. Local National NAFI Employee. A national or citizen of a host country who is employed in that country by or for a **NAFI**.

7. Third (Other) Country National NAFI Employee. A citizen or national of a country other than the United **States** or the host country who is employed by a NAFI .

8. Foreign Areas. Areas (including the Republic of **Palau (Belau)**, Federated States of Micronesia, and the Republic of the Marshall Islands, all formerly the Trust Territory of the Pacific Islands) situated outside the United States, the Commonwealth of Puerto Rico, the Panama Area and the possessions of the United States (including the Commonwealth of the Northern **Mariana** Islands, a United States Territory).

9. Host Country. A foreign country where U.S. Forces are stationed.

10. Host Government. The political authority of the foreign country where U.S. Forces are stationed under provisions of a treaty and/or agreement.

11. Resident Aliens. People who are foreign born residing in the host country and who have not become naturalized citizens.

12. Non-U.S. Citizens. A person who is not a citizen of the United States.

13. U.S. National. A **person born:**

a. In an outlying possession of the United States on or after the date of formal acquisition of that possession;

b. Of parents who are U.S. nationals, in an outlying possession of the United States; or

c. Of unknown parents in an outlying possession of the United States.

14. Indirect Hire System. A system that provides that the host country assumes the responsibility of ensuring that the needs of the U.S. Forces for local national personnel are met and that the host country is in fact the official employer of such personnel.

15. Local Prevailing Rates. Rates, determined by wage surveys, paid to local national personnel employed in retail, wholesale, service, and recreation establishments for comparable jobs.

16. Nonappropriated Fund Instrumentality (NAFI). An integral DoD organizational entity through which (a) an essential Government function is performed, and (b) other DoD organizations are provided or assisted in providing morale, welfare, and recreational programs. The NAFI is established and maintained individually or jointly by the Heads of the DoD Components.

a. As a fiscal entity, the NAFI maintains custody of and control over its nonappropriated funds, and is also responsible for the prudent administration, safeguarding, preservation, and maintenance of those appropriated fund resources made available to carry out its function.

b. The NAFI contributes to the morale, welfare, and recreational programs of other organizational entities when so authorized, is not incorporated under the laws of any State or the District of Columbia, and enjoys the legal status of an instrumentality of the United States.

17. Nonappropriated Funds (NAFs). Consist of cash and other assets received by NAF instrumentalities from sources other than monies appropriated by the Congress of the United States. NAFs are Government funds and are used for the collective benefit of military personnel, their dependents, and authorized civilians who generated them. These funds are separate and apart from funds that are recorded in the books of the Treasurer of the United States.

D. LEGAL STATUS OF CIVILIAN EMPLOYEES OF NAFIs

1. NAFI employees are Federal employees within the Department of Defense.

2* Section 2105(c)¹ of Title 5, U. S. C., provides that:

"An employee paid from nonappropriated funds of the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Ship's Stores Ashore, Navy exchanges, Marine Corps exchanges, Coast Guard exchanges, and other instrumentalities of the United States under the jurisdiction of the Armed Forces conducted for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Armed Forces is deemed not an employee for the purpose of

(1) Laws (other than subchapter IV of chapter 53² and sections 55503 and 7204⁴ of this title) administered by the Office of Personnel Management; or

(2) subchapter I of chapter 81⁵ and section 7902⁶ of this title.

This subsection does not affect the status of these **non-**appropriated fund activities as Federal instrumentalities."

3. Subchapter IV of chapter 53 of Title 5, United States Code, (as amended by P.L. 92-392) provides for a pay system under which the rates of pay of prevailing-rate employees are fixed, and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates.

4. The acts quoted above removed NAFI employees from the provisions of laws or regulations administered by the U.S. Office of Personnel Management (OPM), except Equal Employment Opportunity (EEO) and wage fixing for prevailing-rate employees covered under the provisions of P.L. 92-392 and except for application of the Fair Labor Standards Act (as amended by P.L. 93-259).

5. NAFI personnel policy is governed **or** guided by DoD Directives, Instructions, Manuals, executive orders, public laws, OPM issuances, DoD circulars, and other regulations. Documents pertaining to this Manual are listed (the list may not be complete) on pages xi through xvi.

E. NEW OR REVISED PROGRAMS

1. The provisions of this Manual shall not be construed as limiting NAFIs in the continuance, development, implementation, and administration of personnel policies deemed appropriate to the establishment and maintenance of sound, progressive career development and management programs. However, such programs must meet the basic objectives of DoD policy set forth in this Chapter.

¹ Definition of employee.

² Prevailing rate pay systems.

³ NAF employee pay for Sunday and overtime work.

⁴ Certain areas of equal employment opportunity.

⁵ Compensation for work injuries.

⁶ Safety programs.

2. New programs or revisions to existing programs that increase the levels of NAFI employee compensatory benefits and allowances so that they exceed those authorized in this Manual will be subject to approval, prior to implementation, by the ASD (**FM&P**) upon recommendation of the appropriate Head of the requesting DoD Component.

3. DoD Components are encouraged to carry out research and demonstration projects that test new approaches to personnel management. Such projects require prior approval of the DoD NAF Personnel Policy Office and consultation with employees or consultation and negotiation with unions when negotiated agreements exist. The DoD NAF Personnel Policy Office may waive personnel policies in the conduct of projects, provided such waivers do not violate laws, rules, or regulations relating to political activities or equal employment opportunity; leave, insurance, or annuity provisions; merit system principles; or prohibited personnel practices.

F. IMPLEMENTATION

Heads of DoD Components or designee shall forward a copy of all implementing documents to the DASD (**CPP**) within 120 days of the effective date of this Manual or subsequent changes. All Component regulations and documents (including group insurance and retirement plan summaries and employee booklets) that serve to satisfy the requirements of DoD 1401 .1-M and applicable laws, etc., shall be provided. The DASD (**CPP**) is responsible for reviewing such regulations and documents in accordance with DoD 1401 .1-M, Chapter I, **B.2.b.**